

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Robertson)
DIRK KEMPTHORNE, Secretary of the Interior,)	
<u>et al.</u> ,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS'
NOTICE OF FILING RESTATED FEES AND EXPENSES**

At the May 14, 2007 hearing, the Court ruled on Defendants' previously filed objections to Plaintiffs' two petitions for fees and expenses arising from the Erwin discovery sanctions and the Sapienza declaration. Tr. 4:23-7:17;15:3-16:10 (May 14, 2007). In its ruling from the bench, the Court requested that Plaintiffs resubmit their time records and exclude time for work the Court had determined was non-compensable. Tr. at 16:7-16:10. Concerning the Erwin fee petition, the Court ruled that it would allow Plaintiffs fees for their Motion to Compel, for re-deposing Ms. Erwin and for the fee petition itself, but it would not award fees for the Michelle Singer deposition or Plaintiffs' Report on the Status of the Evidence. Tr. at 5:4-22; Tr. at 15:3-7. The rejected tasks reflected a sui generis investigation that Plaintiffs had pursued outside the scope of the Court's sanctions order.

On May 21, 2007, Plaintiffs filed their Restatement of Fees and Expenses ("Plaintiffs' Restatement").¹ While Plaintiffs withdrew some of the time entries from the Erwin fee petition

¹ Plaintiffs' Restatement does not resolve Defendants' previously raised objections contained in Defendants' Objections to Plaintiffs' Request for Attorneys' Fees and Expenses Pursuant to the Court's February 5, 2003 Ruling ("Erwin Fee Objections") (filed Dec. 14, 2004)

that the Court deemed to be outside the scope of the original sanctions order, they did not remove them all. Specifically, Mr. Brown resubmitted several time entries and Mr. Rempel resubmitted one entry which involve work on discovery matters that the Court found outside the sanctions order and reflect numerous hours spent in support of Plaintiffs' unsanctioned investigation and Report on the Status of the Evidence; the entries are for legal research, correspondence and discussions regarding the potential culpability of Department of Justice attorneys² and Interior personnel, summarizing depositions, and an entry for preparing a "Motion to Compel" after the sanctions order. These time entries are listed separately in Defendants' Exhibit 1 and total \$11,376.88. Such work is not compensable under the Court's May 14, 2007 ruling. See also Copeland v. Marshall, 641 F.2d 880 (D.C. Cir. 1980) ("[W]here a fee is sought from the United States, which has infinite ability to pay, the court must scrutinize the claim with particular care.").

Finally, in their resubmission, Plaintiffs request that the Court order payment of the fee award "forthwith." Plaintiffs' Restatement at 4. Defendants respectfully request that they be provided a reasonable amount of time – thirty days from the Court's final determination of the fee award amount – to remit payment to Plaintiffs. Plaintiffs have not demonstrated that payment made thirty days from the Court's final ruling will prejudice them. Indeed, the Court has already ruled, over Defendants' objection, that Plaintiffs will be compensated at a higher

[Dkt. No. 2783] and Defendants' Corrected Objections to Plaintiffs' Statement of Fees and Expenses ("Sapienza Fee Objections") (filed July 23, 2004) [Dkt. No. 2619].

² The Court ultimately quashed Plaintiffs' subpoenas to depose three Department of Justice attorneys, stating that the information Plaintiffs purported to seek was "not relevant to the underlying lawsuit." Memorandum and Order at 5 (Sept. 2, 2004) [Dkt. No. 2661].

hourly rate because they prepared their fee petition at a later date, recognizing that had Plaintiffs filed their fee petition earlier, Defendants would have been required to pay earlier. Tr. at 15:8-15:13 (May 14, 2007). Under the circumstances, payment within thirty days from the Court's final ruling on the fee petition is reasonable.

Dated: June 4, 2007

Respectfully submitted,
PETER D. KEISLER
Assistant Attorney General
MICHAEL F. HERTZ
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

/s/ Robert E. Kirschman, Jr.
ROBERT E. KIRSCHMAN, Jr.
(D.C. Bar No. 406635)
Deputy Director
TIMOTHY E. CURLEY
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Phone (202) 616-0328
Fax (202) 514-9163

CERTIFICATE OF SERVICE

I hereby certify that, on June 4, 2007 the foregoing *Defendants' Objections to Plaintiffs' Notice of Filing Restated Fees and Expenses* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

Defendants' Exhibit 1
Resubmitted Time Entries Outside the Scope of the Court's May 14, 2007 Ruling

Objectionable Resubmitted Time Entries of Mark Brown			
Date	Description	Hours	Amount
02/15/03	Legal Research re Attorney-client Privilege in Trust Context re Jensen re Motion to Compel Erwin Testimony	2.750	\$1,017.50
02/15/03	Legal Research re Attorney-client Privilege in Trust Context re Jensen re Motion to Compel Erwin Testimony	2.250	\$832.50
02/16/03	Legal Research re Attorney-client Privilege in Trust Context re Jensen re Motion to Compel Erwin Testimony; prepare memorandum re same	3.583	\$1,325.71
02/16/03	Legal Research re Attorney-client Privilege in Trust Context re Jensen re Motion to Compel Erwin Testimony	3.416	\$1,263.92
02/18/03	Legal research re Chinese walls re Erwin Motion to Compel	2.416	\$893.92
02/18/03	Legal research re Chinese walls re Erwin Motion to Compel	3.083	\$1,140.71
02/19/03	Legal research re Chinese walls re Erwin Motion to Compel	1.416	\$523.92
02/19/03	Prepare Erwin Motion to Compel	2.916	\$1,078.92
05/21/03	Summarize Erwin deposition transcripts	0.333	\$126.54
05/22/03	Summarize Erwin deposition transcripts	1.500	\$570.00
05/22/03	Summarize Erwin deposition transcripts	4.750	\$1805.00
05/22/03	Summarize Erwin deposition transcripts	0.750	\$285.00
10/30/04	Prepare Letter to Opposing Counsel re Petrie Notes	0.333	\$129.87
11/01/04	Office conference with DMG; finalize Dodge Wells letter re Petrie Notes: telephone conference with NARF	0.583	\$227.37
Total		27.33	\$11,220.88

Objectionable Resubmitted Time Entry of Geoffrey Rempel			
Date	Task	Time	Amount
11.13.04	Discussion with Brown re brief, culpability of Spooner, Petrie, Griles, Cason, Jensen and apparent ignorance of Quinn; adverse inferences re Petrie warranted due to his destruction of critical notes.	0.4	\$156.00
Total		0.4	\$156.00

Total	\$11,376.88
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